IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2007

CORM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

W.P. No.36263 of 2007
and
M.P. Nos.1 & 2 of 2007

V.Prakash
Sr.Advocate
Honorary President
MRF Units Workers Union
No.50
Armenian Street
Ist Floor
Chennai 600 001. ..Petitioner

Vs

1. The Deputy Superintendent of Police
Arakkonam.

2. The Inspector of Police
Taluk Police Station
Arakkonam.

3. MRF Limited
Itchiputhur
Arakonam 631 003
Rep. By its Plant Manager
(Impleaded as R.3 vide order of Court
in M.P. No.2 of 2007 dt.14.12.2007) ..Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus as stated therein.

For petitioner : Mr.V.Prakash,Party-in-person

For respondents : Mr.K.M.Ramesh for impleading respondent in MP.1/07

Mr.Sanjay Mohan for M/s.Ramasubramaniam Assts.
For impleading respondent in MP.2/07

N.Senthilkumar, Govt.Advocate for R.1 & R.2

ORDER

This Court by order dated 30.11.2007 has disposed of

the writ petition with the following direction:

" 6. In view of the same, the writ petition is disposed of with direction to the petitioner to submit a fresh representation within one week from today and on such representation, the respondents to consider the claim of the petitioner and pass appropriate orders permitting the petitioner to address the gate meeting at MRF Factory at Itchiputhur (near Arakkonam) between 2.30 p.m. and 3.30 p.m. to be held on 16.12.2007 (Sunday), by using megaphone."

2. Subsequently, on the mentioning of Mr.Sanjay Mohan,

learned counsel appearing for M/s.MRF Limited, Arakkonam, it

was posted for certain clarifications. When the matter was

taken up on 4.12.2007, M.P.No.1 of 2007 in W.P.No.36263 of

2007 was filed by MRF Arakkonam Workers' Welfare Union

represented by its Secretary to implead itself as a party

and M.P.No.2 of 2007 was filed by MRF Limited, Itchiputhur,

Arakkonam, represented by its Plant Manager to implead the

company as party.

3. Mr.Sanjay Mohan, learned counsel appearing for the management which has filed the impleading petition, M.P.No.2 of 2007 would submit that the abovesaid order can be clarified to the effect that the writ petitioner may be permitted to address the gate meeting beyond 200 metres subject to the decree passed by the civil Court, which was opposed by Mr.V.Prakash, learned senior counsel who is the petitioner in the writ petition appearing party-in-person. However, he has fairly stated that since the management has come by way of the impleading petition he has no objection to argue the case on merit again in the presence of counsel for management so that a final order can be passed and submitted that the earlier order dated 30.11.2007 can be recalled. In view of the same, order dated 30.11.2007 is recalled and the writ petition heard along with the said impleading petitions.

4. The writ petition is filed by Mr.V.Prakash, learned senior counsel and also the Honorary President of MRF United Workers Union for direction to the respondents in the writ petition namely, the Deputy Superintendent of Police, Arakkonam and the Inspector of Police, Taluk Police Station, Arakkonam to permit him to address the workers of MRF Factory at Itchiputhur [near Arakkonam] at the gate

meeting between 2.30 pm. and 3.30 pm. to be held on 2.12.2007 (Sunday), as traditionally done in all factories with permission to use mike.

5. The case of the petitioner is that the workers of MRF Limited, having realised that there was no genuine trade union to ventilate the grievances of the workers and the Union existed was operated by the management, started a trade union by name, MRF United Workers Union, which was registered. Thereafter, when there was some victimisation of workers, complaints were made by the said Union to the Committee of Freedom of Association (CFA) of the International Labour Organisation (ILO) having headquarters at Geneva and in registering the said complaint, the petitioner being the honorary President and senior lawyer, has assisted the workers. The International Labour Organisation, after elaborate discussion of the entire issue, has made some recommendations to the Government of India and the appropriate Government to issue necessary direction for the recognition of the MRF United Workers Union.

6. It is the case of the writ petitioner that the said Union has invited the petitioner to address the workers at the gate meeting which is traditionally done. It is also stated that MRF Limited has obtained an order of interim

injunction in the District Munsif's Court, Sholingar against MRF United Workers Union in three interlocutory applications, in I.A.Nos.53 to 55 of 2005 in O.S.No.13 of 2005. In another suit filed by the management in OS.No.90 of 2002 on the file of Sub Court, Ranipet, Vellore District, against Mr.Thirumavalavan and others, in which the petitioner's name was also shown, I.A.No.82 of 2002 was filed for interim injunction restraining the respondents from staging dharna, holding protests, rallies within 50 metres on all sides of the factory, etc. The petitioner has stated that in view of the said injunction order, the MRF United Workers Union was informed by the police that they should not hold the gate meeting on 7th December, 2007. According to the petitioner, the said injunction order can never stand in the way of addressing the workers to inform them the result of the complaints and recommendations of the ILO, nor does it bar the MRF United Workers Union to invite the petitioner to address the meeting. It is the further case of the petitioner that addressing such meeting is a fundamental freedom guaranteed under Article 19(1)(a) of the Constitution of India and that cannot be deprived of under the guise of an order of injunction. It is, in view of the same, the petitioner has filed the above writ petition for the prayer stated above.

7. Even though the prayer was in respect of a gate

meeting on 2.12.2007, the petitioner would submit that this being an issue relating to fundamental right, the petitioner has the right to address the meeting on subsequent days and therefore, it cannot be said that the writ petition has become infructuous.

8. M.P.No.1 of 2007 is filed by MRF Arakkonam Workers' Welfare Union, which is also stated to be a registered Union, to implead it as a party with the pleadings that the MRF Limited is having a tyre manufacturing factory at Itchiputhur wherein 1416 workers are working and out of them, 1365 are confirmed workmen. According to the petitioner in the said M.P., out of 1365 workmen, 1194 are the members of its Union, 57 workers are members of MRF Cycle Tyre Workers Union and remaining 114 workers alone are the members of MRF United Workers Union to which the writ petitioner is the Honorary President. Therefore, the petitioner in the M.P. is the majority union recognised by the management as the sole collective bargaining agent. According to the petitioner union, the workmen have given individual letters to the MRF Limited authorising the Union to deduct the subscription from their monthly salary. According to the petitioner in the M.P., MRF United Workers Union is having its Office at Sholingar Road, opposite to L.I.C. at Arakkonam and if the writ petitioner wants to speak to its members, he can address the meeting in the

Office itself in respect of the ILO recommendations. The gate of MRF Limited is situated on the Highways road which is very narrow. According to the petitioner in the M.P., the aim of the writ petitioner is to create certain problems among the work force so that the management will take some drastic action and the petitioner wanted to take advantage of the same to ventilate the grievance that even after the recommendations of the ILO, the management is resorting to victimisation.

9. It is the further case of the petitioner in the M.P. that if really the writ petitioner wants to address its members, he can do it in a peaceful manner in the office of the union and the holding of gate meeting will only create problem among the workmen and divide the workmen who are united. Further, the intention of the writ petitioner is not to use his right under Article 19(1)(a) of the Constitution of India, but to create problem in the smooth running of the factory and by virtue of the public meeting sought to be addressed by the petitioner, the management may even close down the factory. Therefore, in the public interest, no permission should be given to the writ petitioner. It is the further case of the petitioner in the M.P. that in O.S.13 of 2005, the writ petitioner himself is a party against whom there is an order of injunction passed by the competent civil Court and therefore, the writ

petitioner should not be given any permission to address the gate meeting. In view of the same, according to the petitioner, it is a proper and necessary party to be impleaded as a respondent in the writ petition.

10. M.P.No.2 of 2007 is filed by the MRF Limited being the employer to implead itself as a party. It is the case of the petitioner in the said M.P. that the management has filed the suit in O.S.No.13 of 2005 in the District Munsif's Court, Sholingar in which M.R.F. United Workers Union to which the petitioner is the Honorary President was the defendant and it was represented by its President, V.Paramasivam and General Secretary, G.Shankar as defendants 1 and 2. In the suit the relief claimed was permanent injunction restraining the defendants from interfering in any manner with the movement of raw-materials, stock of goods, etc., permanent injunction from interfering in any manner with the movement of loyal workers, executives, officers and customers from and into the plaintiff's premises and permanent injunction against the defendants from gathering or demonstrating in any manner within 200 metres of the plaintiff's schedule mentioned premises.

11. In the said suit, the petitioner in the present M.P. has also filed three I.As. namely, I.A.No.53 of 2005 for restraining the respondents from interfering with the

movement of raw-materials, finished goods, etc. till 8.2.2005, I.A.No.54 of 2005 for restraining the respondents from gathering together or demonstrating in any way within 200 metres from the petitioner's premises till 8.2.2005 and I.A.No.55 of 2005 for restraining the respondents from interfering with the movement of Officers and executives from and into the petitioner's premises till 8.2.2005. There were ex parte orders of injunction granted by the District Munsif's Court on 25.1.2005 and it was against the said ex parte injunction orders, M.R.F. United Workers Union has filed revisions in C.R.P.Nos. 427, 631 and 632 of 2005 which were dismissed by this Court on 13.3.2006.

12. It is also the case of the petitioner in the M.P. that in the meanwhile, the suit in O.S.No.13 of 2005 was decreed ex parte on 24.2.2005. It is to set aside the said ex parte decree dated 24.2.2005, the MRF United Workers Union has filed I.A.No.417 of 2007 which is pending. Therefore, according to the petitioner in the said M.P., the permission which is sought for by the writ petitioner to address a gate meeting is against the injunction decree passed by the competent Civil Court. It is the further case of the petitioner/management in the said M.P. that the writ petitioner has not even mentioned as to why he has chosen to address only in the gate meeting at the factory. According to the petitioner, the business of the factory would be

affected if the meeting is held in defiance of the decree passed by the Civil Court. The factory works under three shifts, viz., (i) from 7 am. to 3 pm., (ii) 3 pm. to 11 pm. and (iii) 11 pm. to 7 am. According to the petitioner/management, the permission which is sought for by the writ petitioner will create lot of problems among the customers of the factory. It is also stated that what the International Labour Organisation has done is that it has called upon the Government of Tamil Nadu to examine the complaint of the writ petitioner's Union. It is further stated that the main entrance of the factory is situate on the Highways. Since the gate admittedly belongs to the petitioner/management, at which the writ petitioner wants to conduct the meeting, the petitioner in the M.P. is a proper and necessary party.

13. Mr.K.M.Ramesh, learned counsel appearing for the impleading party in M.P.No.1 of 2007 which is a rival Union submits that the Union sought to be impleaded is consisting of majority of workmen and therefore, it is to be considered as a proper and necessary party. His further contention is that in the meeting, if the writ petitioner addresses, it will only affect the members of the impleading Union and the majority of the workmen who are all members of its Union may be prevented from entering into the factory and hence, the petitioner in the M.P.No.1 of 2007

is a proper and necessary party.

14. Mr.Sanjay Mohan, learned counsel appearing for the petitioner/management in M.P.No.2 of 2007 would submit that inasmuch as the writ petitioner wants to address the gate meeting in front of the factory which belongs to the petitioner in M.P.No.2 of 2007, the petitioner has got substantial interest in the subject matter of the writ petition and therefore, it should be treated as a proper and necessary party.

15. Per contra, Mr.V.Prakash, learned senior counsel/party-in-person contends that the rival Union which is the petitioner in M.P.No.1 of 2007 is neither a necessary party, nor a proper party and it is not concerned with the issue involved in the writ petition at all. He has made it very clear that his intention is not to deviate the members of the petitioner Union in M.P.No.1 of 2007, nor to prevent its members from entering into the factory. He has also made it clear that the members of the Union/ petitioner in M.P.No.1 of 2007 will have the freedom to enter into the factory at the time when the petitioner is permitted to address in the gate meeting and those members who want to enter into the factory premises will not be prevented either by the writ petitioner or by the members of the MRF United Workers Union to which the petitioner is the Honorary

President and there is absolutely no basis for the apprehension of the learned counsel for the petitioner in M.P.No.1 of 2007 and police protection may also be given so that the members of its Union can enter into the factory premises, if they desires.

16. As far as the management, which is the petitioner in M.P.No.2 of 2007 is concerned, Mr.V.Prakash would submit that the management cannot be allowed to be impleaded as a party since it is neither a necessary nor a proper party. The meeting which is sought to be addressed by the writ petitioner is a gate meeting which is to be conducted outside the gate and the petitioner/management cannot say anything as if it is the owner of the road and the apprehension of the petitioner that the traffic may be affected on the Highways will be taken care of by the Police and his intention to address the members of the workers belonging to his Union is not to cause any disruption to the business of the employer at all. However, he would submit that the management can be heard as an intervener and not by impleading it as a party. His submission is that by impleading the management as a party, the management is given the right to participate in the further proceedings to which the management is not entitled since addressing a meeting is a fundamental right of the writ petitioner and hearing the same is equally the right of the members of the

MRF United Workers Union. On merits also, he would submit that as against the ex parte decree passed in the civil Suit stated above, an application to set aside the same has been filed as admitted by the MRF Limited itself. In any event, according to the writ petitioner, the decree of injunction stated to have been obtained in the said suit has to be construed in the context of various averments made in the plaint and the said decree cannot be construed as a permanent embargo against anybody to speak anything in front of the factory. If that is the purport, then it would amount to civil Court granting a decree against the fundamental right of a citizen. Therefore, according to him, irrespective of the decree of injunction which is relating to wage settlement, the petitioner's right to address a gate meeting in respect of International Labour Organisation's recommendations which was not the subject matter of the suit, cannot be taken away by such decree. He would rely upon the judgment of the Supreme Court reported in Kameshwar Prasad vs. State of Bihar [AIR 1962 SC 1166] to substantiate his contention that even for demonstration, if it is peaceful and orderly, the same has to be permitted under Article 19(1)(a) and (b) of the Constitution of India.

17. Mr.Sanjay Mohan, learned counsel appearing for the employer has reiterated that the decree of permanent injunction which is in force has to be respected until the

same is set aside in the manner known to law and the mere filing of an application to set aside the decree does not mean that the decree stands nullified. He would rely upon clause (3) of the decree which prevents even gathering within 200 metres from the gate and in view of the decree of the Civil Court, the petitioner may be permitted to conduct gate meeting beyond 200 metres from the entrance. He would submit that the decree of the Civil Court must be taken as a regulation and the fundamental right to speech is not an absolute right and the same is subject to reasonable restrictions. He would submit that even in the absence of a decree, the State and the Police have the right to impose such reasonable restrictions. He would submit that the petitioner has got no choice of location to address the meeting and the choice of location cannot be stated to be a fundamental right of freedom to speech. He would also rely upon various judgments in support of his contentions, viz.,

(1) 1989 (2) MLJ 200 (Madras) [Audco India Ltd., vs. The Audco India Employees' Union and Others];

(2) 1989 (1) LLN 138 (Bombay) [Asian Paints (India) Ltd. vs. Commissioner of Police and others];

(3) 1982 (1) LLJ 356 (Kerala) [Gwalior Rayons Silk Manufacturing (Weaving) Co. Ltd. And another vs. District Collector and others];

(4) 86 FJR 528 (Kerala) [P.P.Mathew vs. Superintendent of Police, Alappuzha and others]; and

(5) 1990(2) LLJ 517 (Kerala) [C.V.Jayachandran vs. State of Kerala and others].

18. I have heard the writ petitioner who appeared in person as well as other learned counsel on the impleading petitions as well as on merits of the case.

19. As far as M.P.No.1 of 2007 is concerned, it is filed by MRF Arakkonam Workers Welfare Union. Even assuming that the said Union is having majority number of workmen as its members, viz., 1194 workers out of 1365, the question to be considered is whether the said Union is a proper and necessary party to the writ petition. It is well settled that a necessary party is one without whose presence the decision to be taken in a case cannot be arrived at. On the other hand, a proper party is one whose presence is required for proper adjudication of the issue involved in a case. The subtle difference between the two is that in the case of former, the decision can be arrived at only after hearing the impleading party, whereas in later, the impleading of the party is necessary for the purpose of proper adjudication. As far as the said Union, the petitioner in M.P.No.1 of 2007 is concerned, there is

absolutely no difficulty to come to the conclusion that the said Union is neither a necessary party, nor a proper party. The apprehension of Mr.K.M.Ramesh, learned counsel for the Union/impleading party that its members may be obstructed from entering into the factory has no basis, especially in the circumstances that the writ petitioner has made it clear that his intention is not to obstruct anyone belonging to the said Union at all. Further, it is, during working hours only, the meeting will be conducted near the gate which is a traditional form of meeting and therefore, there is no question of the petitioner in M.P.No.1 of 2007 being impleaded as a party in the writ petition which has been filed for the purpose of conducting gate meeting among the members of the MRF United Workers Union to which the writ petitioner is the Honorary President. In view of the same, M.P.No.1 of 2007 is dismissed.

20. In respect of the impleading petition filed by the employer, even though the writ petitioner has submitted that he has no objection for hearing him as an intervener, but his objection is only to implead the employer as a party since the impleadment will give rise to a new cause of action or will confer a right for further cause of action. As far as the relief claimed in the writ petition is concerned, as I have stated earlier, the desire of the writ petitioner is to speak to the members of his Union not

within the premises of MRF Limited, but outside the premises, near the gate and therefore, the apprehension of the employer that there may be breach of peace inside the campus by the meeting to be addressed by the writ petitioner, in my considered view, has no basis. Therefore, it cannot be said that the petitioner in M.P.No.2 of 2007 is a necessary party. However, it is only among the workers of the employer/petitioner in M.P.No.2 of 2007, the writ petitioner wants to address and therefore, it can never be presumed that the petitioner in M.P.No.2 of 2007 has no interest in the issue involved in the writ petition at all. Certainly, the petitioner in M.P.No.2 of 2007 is a proper party, though it is not at all a necessary party. In view of the same, M.P.No.2 of 2007 stands allowed.

21. Now, coming to the main issue involved in this case, it is seen that the MRF Limited has filed the suit in O.S.No.13 of 2005 on the file of District Munsif, Sholingar against (i) MRF United Workers Union represented by V.Paramasivam, President and (ii) MRF United Workers Union represented by G.Shankar, General Secretary. The plaint in the said suit shows that MRF United Workers Union was formed with 120 workers as an inter-union rivalry to M/s.MRF Cycle Tyre Unit Employees Association and by forming the rival Union, the members of MRF United Workers Union are indulging in arm-twisting methods, threatening the members

of MRF Cycle Tyre Unit Employees Union and by such unlawful conduct the MRF United Workers Union is interfering with the production process and general discipline in the establishment. Further, a reading of the plaint also shows that a settlement was entered into between the plaintiff management and MRF Tyre Unit Employees Association after mutual negotiation running for number of days and such negotiation was sent to the Government authorities as per the requirements of Rule 25(3) of the Tamil Nadu Industrial Disputes Rules, 1958. The specific case of the employer/plaintiff in the said suit was that after such negotiated settlement was entered into, the Office bearers of the defendants Union (MRF United Workers Union) are indulging in unlawful activities and they have been gathering and threatening loyal workers, executives, officers and obstructing customers as well as movement of raw-materials and goods into and from the plaintiff establishment. It is further stated in the plaint that it is after the settlement, the members of the said MRF United Workers Union are obstructing the day-to-day affairs of the plaintiff establishment and the plaintiff/employer is stated to have given police complaint by way of a report submitted to the Deputy Superintendent of Police, Arakkonam dated 12.1.2005. It is with that pleadings, the employer has filed the suit with the following prayer:

(a) granting permanent injunction restraining the defendants, its men, members and agents from interfering in any manner with the movement of raw materials, stock of goods, from and into the plaintiff premises;

(b) granting permanent injunction restraining the defendants, its men, members and agents from interfering in any manner with the movement of loyal workers, executives, officers and customers from and into the plaintiff's premises;

(c) granting permanent injunction restraining the defendants, its men, members and agents from gathering or demonstrating in any manner within 200 metres of the plaintiff's scheduled mentioned premises."

22. Even though it is true that interlocutory applications were filed and in fact, interim injunctions were granted including the interim injunction in respect of third prayer in the main suit as stated above, it is not in dispute that ultimately, the Civil Court has passed an ex parte decree in the suit on 24.2.2005. It is also not in dispute that the defendants in the said suit, viz., MRF

United Workers Union has filed an application to set aside the ex parte decree and the same is pending.

23. Factually, it is relevant to note that the writ petitioner is not a party in the suit. The question to be considered in this case is as to whether such a decree passed by the civil Court in O.S.No.13 of 2005 dated 24.2.2005 would be an impediment legally preventing the writ petitioner from speaking in the gate meeting, within 200 metres to explain to the members of MRF United Workers Union about the International Labour Organisation's recommendations. The right of the writ petitioner to address the gate meeting is no doubt a fundamental right to freedom of speech and expression and it is equally the right of the members of the MRF United Workers Union to assemble peaceably and without arms to hear such speech of the writ petitioner which is the fundamental right guaranteed under Article 19(1)(a) of the Constitution of India. The fundamental right to freedom of speech conferred under Article 19(1)(a) of the Constitution of India can be curtailed only in the circumstances which are covered under Article 19(2) of the Constitution of India. Likewise, the right conferred to assemble peaceably under Article 19(1)(b) can be restricted only as per Article 19(3) of the Constitution of India. Since we are concerned about the fundamental right of speech and assemble peacefully, it is

relevant to extract the provisions of the Constitution of

India, viz., Article 19(1)(a) (b), (2) and (3).

"19. Protection of certain rights regarding freedom of speech, etc.-

(1) All citizens shall have the right-

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) ....

(d) ....

(e) .....

(g) .....

[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of [the sovereignty and integrity of India,] the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.]

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of [the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

24. Therefore, by a reading of Article 19(1)(a) of the Constitution of India, it is clear that the fundamental right to freedom of speech and expression can be curtailed only by the State from making a law. When such law imposes reasonable restrictions which must relate to the sovereignty and integrity of India, security of the State, friendly relationship with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement of an offence, the same is permissible.

25. The right of the writ petitioner cannot be taken away under any of the restrictions contemplated under Article 19(2) of the Constitution of India and there is no law passed by the State Government imposing such reasonable restrictions.

26. In such circumstances, there is no difficulty to come to the conclusion that the right of the writ petitioner in conducting the gate meeting to address the members of the Union is certainly a fundamental right, of course, subject to the maintenance of public order, decency and morality. In the absence of any State law in this regard, it is always open to the police to take suitable action for maintaining law and order especially in the circumstance that the writ petitioner has made it clear that his intention is not to obstruct any worker from attending the

factory at all and his only intention is to explain the International Labour Organisation's recommendations in respect of the employer's conduct in preventing the petitioner Union to be recognised.

27. Article 19(2) of the Constitution of India which forms part of Article 13 (2) forbids the State from making any law which takes away the fundamental right conferred under Part-III and any law made in contravention will be void to that extent. Article 13(2) states as follows:

"13. Laws inconsistent with or in derogation of the fundamental rights.-

(1) ....

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void. "

28. While defining the term, `the State', Article 12 makes the it clear that "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

29. While dealing with the constitutional validity of Section 30 of the Criminal Procedure Code, 1898, it was held by the Supreme Court in Budhan Choudhry and others vs. State of Bihar (AIR 1955 SC 191) that the judicial decision must of necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination, while quoting the wordings of Frankferter,J. in Snowden vs. Hughes [1943 (321) US 1 (K)], where it was held as follows:

"The Constitution does not assure uniformity of decisions or immunity from merely erroneous action, whether by the Courts or the executive agencies of a State."

30. On the facts and circumstances of the present case it is clear that the suit filed by the Management in O.S.No.13 of 2005 against the MRF United Workers Union was in the context of a settlement entered between the employer and MRF Cycle Tyre Unit Employees Association, which was not acceptable to the MRF United Workers Union, and therefore, anticipating that they may indulge in unlawful activities by threatening the loyal workers, executives, officers and obstructing the customers apart from the movement of raw-

materials, etc. the suit was filed. Therefore, the decree passed by the Civil Court must be construed on the facts and circumstances of the case and the decree cannot be considered as a permanent bar on any person to exercise his fundamental right of freedom of expression, however, subject to the reasonable restrictions which are permissible under Article 19(2) of the Constitution of India. Therefore, I am of the considered view that the ex parte decree passed in the said suit cannot be put against the peitioner to prevent him from exercising his fundamental right of speech. It is also relevant to point out that in the said suit the writ petitioner himself was not a party. Considering the factual position, I am emboldened to conclude that even if the ex parte decree of the Civil Court is to be construed as a permanent bar either against the members of the MRF United Workers Union or against the writ petitioner from exercising their fundamental right of speech as guaranteed under Article 19(1)(a) of the Constitution of India, such embargo has to be simply ignored, as the fundamental right of the citizen is more sacred and basic structure of the Constitution of India.

31. In Kameshwar Prasad and others vs. State of Bihar and another (AIR 1962 SC 1166), the Supreme Court has held that the fundamental right guaranteed under Article 19(1)(a) and 19(1)(b) cannot be treated as a permission to

demonstrate by instances like stone-throwing by a crowd and disorderly demonstration, but nevertheless, it was held it can also be peaceful. The Supreme Court has further held in the following words:

" 13. ..... It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Art.19(1)(a) & 19(1)(b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Art.19(1)(a) & 19(1)(b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances."

32. Therefore, the reference made by the learned counsel for the employer to the judgment of the Delhi High Court in Press Trust of India Employees vs. Press Trust of India [(2005 (3) LLJ 22 (Delhi)] may not be of any application to the facts of the case on hand, wherein the petitioner only wants to conduct a peaceful gate meeting to explain about the recommendations of the International Labour Organisation, making it very clear that his intention is not to prevent the loyal workers of the employer from attending the work or preventing the officers, executives or customers of the employer. Therefore, it cannot be presumed

that the writ petitioner intends to demonstrate with violent means.

33. The judgment of Kerala High Court rendered in Mathew vs. Superintendent of Police and others [(1995 (1) LLJ 363 (Kerala)] also does not apply to the facts and circumstances of the case on hand. That is a case relating to a person conducting liquor shop, who sought for direction to afford police protection against the workmen. In fact, in that case, the court has permitted the workmen to carry on peaceful agitation at a place 20 feet away from the shop, with direction to give police protection.

34. Likewise, the judgment of the Delhi High Court in A.E.P.C. vs. A.E.P.C. Employees' Union (Regd.) [(1989 (1) LLJ 117 (Delhi)], is a case where the Delhi High Court was dealing with the strike and demonstration inside the premises of the management and in those circumstances it was held that to demonstrate in the premises of another person, there is no fundamental right to speak.

35. In view of the above said narration of facts in this case, necessary conclusion which could be arrived at is to allow the writ petitioner to have the gate meeting to explain to his Union members about the recommendations of the International Labour Organisation. Of course, the

meeting to be conducted in a peaceful manner not preventing the other employees, who intend to attend to work or the executives or officials of the MRF Cycle Tyre Unit or movement of goods from and out of the premises of the MRF Limited and the meeting to be conducted peacefully between 2.30 p.m. to 3.30 p.m. on any day which may be pointed out by the petitioner and in which event, the respondents 1 and 2 shall give permission for the same by using the megaphone.

The writ petition stands allowed in the above terms. No costs. M.P.No.1 of 2007 is dismissed and M.P.No.2 of 2007 is allowed.

Kh

To

1. The Deputy Superintendent of Police
Arakkonam.

2. The Inspector of Police
Taluk Police Station
Arakkonam.